

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

SEAN MASON,)	
)	
Plaintiff,)	Civil Action No. 1:07-cv-05615
)	
v.)	Judge Suzanne B. Conlon
)	
MEDLINE INDUSTRIES, INC., and)	Magistrate Judge Jeffrey Cole
THE MEDLINE FOUNDATION,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

Defendants Medline Industries, Inc. and The Medline Foundation (collectively, “Medline”), by their counsel, respectfully move to dismiss the Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b). In support of this motion, Medline states:

1. Relator Sean Mason’s Amended Complaint (“complaint”) purports to state claims under the False Claims Act (“FCA”), 31 U.S.C. § 3729 *et. seq.*, and the Illinois Whistleblower Reward and Protection Act (“IWRPA”), 740 Ill. Comp. Stat. § 715/1 *et seq.*, in connection with Medline’s sale of medical and surgical supplies to two groups of purchasers: the Veterans Administration (“VA”), and health care providers who participate in Medicare and Medicaid. The United States has declined to intervene in this matter.

2. Count I asserts three types of violations of the FCA. First, Mason alleges that Medline defrauded the VA by submitting claims that were inflated because either the VA agreed to the wrong benchmark customer for setting pricing and because Medline manipulated pricing to that customer. However, Mason fails to allege any specific false representations or false claims in this regard.

3. Second, Mason alleges that Medline overbilled the VA’s mail order pharmacy program for products it obtained from other manufacturers. Mason bases this allegation upon a

non-existent contractual provision (which he has failed to provide the Court) and again fails to identify any false claims.

4. Third, Mason alleges a scheme to bribe customers to purchase Medline products and then cause the customers to submit false claims to Medicare, in violation of the Anti-Kickback Statute (“AKS”), 42 U.S.C. § 1320a-7b(b). In support of this allegation, Mason (a) fails to identify any false claims which Medline presented or caused to be presented for payment, (b) fails to allege that any false claims were caused by Medline, (c) fails to allege a material impact on government reimbursement, (d) fails to establish even a plausible claim for relief under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), because he offers no reason to believe that things characterized as “bribes and kickbacks” are actually violations of the AKS, and fails to plead the underlying alleged bribes with particularity as required by Fed. R. Civ. P. 9(b); and (e) fails to plead facts supporting a conclusion of scienter under either the FCA or AKS.

5. Count II, brought under the Illinois WRPA is deficient for the same reasons as Count I. Further, Count II is deficient because the complaint contains no specific allegations as to presentation of claims to the State of Illinois.

6. In further support of this motion to dismiss, Medline submits the accompanying memorandum of law and the supporting exhibits attached to this motion.

7. Subject to the Court’s approval, the parties propose the following agreed-upon briefing schedule: Relator will have to and including May 8 to respond to the motion to dismiss. Defendants will have to and including May 29 to reply.

WHEREFORE, Medline respectfully requests that this Court dismiss the Amended Complaint with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b).

Dated: April 10, 2009

By: s/Robert R. Stauffer
One of Their Attorneys

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CERTIFICATE OF SERVICE

I, Ana R. Bugan, an attorney, hereby certify that on April 10, 2009, Defendants' Motion to Dismiss Amended Complaint and Defendants' Motion to Stay Discovery Pending the Resolution of Motion to Dismiss, were filed electronically with the United States District Court for the Northern District of Illinois, Eastern Division. Notice of this filing will be sent electronically to the following parties by operation of the Court's electronic filing system. Parties and interested persons may access this filing through the Court's system.

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